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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/690,437	10/18/2000	Michel K. Susai	1763.0110000	3741
26111	7590	02/18/2005	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005				PHAN, TAM T
ART UNIT		PAPER NUMBER		
2144				

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/690,437	SUSAI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tam (Jenny) Phan	2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01/24/2005.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 18 October 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

### **DETAILED ACTION**

1. This application has been examined. Amendment received on 01/24/2005 has been entered. Claims 1-8 are previously presented.
2. Claims 1-8 are presented for examination.

#### ***Priority***

3. No priority claims have been made.
4. The effective filing date for the subject matter defined in the pending claims in this application is 10/18/2000.

#### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-2 and 5-6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 12, of U.S. Patent No. 6,618,749. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences between the two pending applications are minor

wording, which do not change the scope of the invention. Refer to the below observation for obvious variations of limitation in claims 1-2 and 5-6 of the instant application and claims 1 and 12 of the pending application.

Instant Application 09/690,437	U.S. Patent Number 6,725,272
1. An apparatus comprising: means for opening a first connection between a first client and an interface unit; means for opening a second connection between said interface unit and a server if no free connection is open between said interface unit and said server; means for allowing said first client to access information on said server via said second connection; means for opening a third connection between a second client and said interface unit; and means for allowing said second client to access information on said server via said second connection without waiting for said first client to disconnect.	1. An apparatus for guaranteeing network performance, comprising: means for opening a connection between a client and an interface unit; means for opening a connection between said interface unit and a requested server if no free connection is open between said interface unit and said requested server; means for estimating a response time of said requested server once a connection is established for said client; means for putting said client on-hold if said response time is more than a threshold value; means for determining when said client should be taken off on-hold; means for allowing said client to access information on said requested server via said connections and said interface unit once said client is taken off on-hold; and means for closing said connection between said client and said interface unit while keeping open said connection between said interface unit and said requested server.
2. The apparatus of claim 1, further comprising: means for delinking said first connection and said third connection while keeping open said second connection.	12. A method for guaranteeing network performance, comprising the steps of: opening a connection between a client and an interface unit; opening a connection between said interface unit and a requested server if no free connection is open between said interface unit and said requested server; estimating a response time of said requested server once a connection is established for said client; putting said client on-hold if said response time is more than a threshold value; determining when said client should be taken off on-hold; allowing said client to
5. A method comprising the steps of: opening a first connection between a first client and an interface unit; opening a second connection between said interface unit and a server if no free connection is open between said interface unit and said server; allowing said first client to access information on said server via said second connection; opening a third connection between a second client and said interface unit; and allowing said second client to access information on said server via said second connection without waiting for said first client to disconnect.	
7. The method of claim 5, further	

comprising the step of: delinking said connection between said first connection and said third connection while keeping open said second connection.	access information on said requested server via said connections and said interface unit once said client is taken off on-hold; and closing said connection between said client and said interface unit while keeping open said connection between said interface unit and said requested server.
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***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. Claims 1-2 and 5-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Roberts et al. (U.S. Patent Number 6,295,551), hereinafter referred to as Roberts.

9. Regarding claim 1, Roberts disclosed an apparatus comprising: means for opening a first connection between a first client and an interface unit; means for opening a second connection between said interface unit and a server if no free connection is open between said interface unit and said server; means for allowing said first client to access information on said server via said second connection; means for opening a third connection between a second client and said interface unit; and means for allowing said second client to access information on said server via said second connection without waiting for said first client to disconnect (Figure 5, column 2 lines 31-57, column 7 lines 24-62, column 9 lines 25-38, column 10 lines 19-36, column 15 lines 7-20).

10. Regarding claim 2, Roberts disclosed an apparatus further comprising: means for delinking said first connection and said third connection while keeping open said second connection (Figure 5, column 5 line 62-column 6 line 8, column 7 lines 35-62, column 19 lines 7-17).

11. Regarding claims 5-6, the method corresponds directly to the apparatus of claims 1-2, thus these claims are rejected using the same rationale.

12. Since all the limitations of the claimed invention were disclosed by Roberts, claims 1-2 and 5-6 are rejected.

#### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parsons, Jr. et al. (U.S. Patent Number 6,085,247), hereinafter referred to as Parson, in view of Rowe et al. (U.S. Patent No. 5,964,836), hereinafter referred to as Rowe.

15. Regarding claim 1, Parson disclosed an apparatus comprising means for opening a first connection between a first client and an interface unit (Abstract, Figure 1, column 3 lines 7-41); means for opening a second connection between said interface unit and a server if no free connection is open between said interface unit and said server (Figures 1 and 7, column 6 line 55-column 7 line 17); means for allowing said first client to access information on said server via said second connection (column 3 lines 7-41, column 10 lines 29-58, column 12

lines 33-53); means for opening a third connection between a second and said interface unit (column 7 lines 10-17, column 10 lines 29-58, column 12 lines 33-53); and means for allowing said second client to access information on said server via said second connection (column 3 lines 7-41, column 10 lines 29-58, column 12 lines 33-53).

16. Parson taught the invention substantially as claimed. However, Parson did not expressly teach means for allowing said second client to access information on said server via said second connection *without waiting for said first client to disconnect.*

17. Rowe disclosed an apparatus having means for allowing client to access information on said server via said second connection without waiting for other client to disconnect (column 3 lines 7-13).

18. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method apparatus of Parsons with the teachings of Rowe to include means for allowing client to access information on said server via said second connection without waiting for other client to disconnect in order to provide persistent session between a first client and the server while allowing the second client to access the information from the server (Rowe, column 5 lines 24-33).

19. Regarding claim 2, Parsons disclosed an apparatus further comprising means for delinking said first connection and said third connection while keeping open said second connection (column 3 lines 8-13, column 7 lines 1-17).

20. Regarding claim 3, Parsons disclosed an apparatus wherein said means for allowing said second client to access information on said server via said second connection is comprised of means for utilizing a content length parameter to determine whether all of said information has been sent to said first client (column 10 lines 30-58, column 12 lines 33-53).

21. Regarding claim 4, Parsons disclosed an apparatus wherein said means for allowing said second client to access information on said server via said second connection is comprised of means for utilizing two or more chunk-size fields to determine whether all of said information has been sent to said first client (column 10 lines 30-58, column 12 lines 33-53).

22. Regarding claims 5-8, the method corresponds directly to the apparatus of claims 1-4, thus these claims are rejected using the same rationale.

23. Since all the limitations of the claimed invention were disclosed by the combination of Parsons and Rowe, claims 1-8 are rejected.

#### ***Response to Arguments***

24. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

25. Applicants' arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

26. As the rejection reads, Examiner asserts that the combination of these teachings render the claimed invention obvious.

#### ***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to the enclosed PTO-892 for details.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (571) 272-3930. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (571) 272-3925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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